

REMARKS

In an Office Action dated March 18, 2004, the disclosure was objected to, and claims 1-12 were rejected. In view of the amendments herein, Applicants respectfully request reconsideration of this application and allowance of the claims, as amended.

The disclosure was objected to on informalities that have been corrected by amendment. In view thereof, withdrawal of the objection to the disclosure is respectfully requested.

Claims 1-12 were rejected under 35 USC §102(b) as being anticipated by WO 93/11723. Insofar as this rejection could apply to the claims, as amended, it is respectfully traversed.

The claims have been amended to recite a matrix consisting essentially of a purified collagen II material derived from natural cartilage tissue from which non-collagen proteins have been removed. The amended claims further recite that said cartilage tissue is subjected to defatting, whereby said matrix consists essentially of fibers of native collagen II which are physiologically acceptable for implant into a mammalian body.

With regard to WO 93/11723 ("the WO '723 reference"), it is apparent from a careful reading thereof that the only description and examples pertaining to collagen II are "paper examples" or "prophetic examples" since they are written in the present tense to conform with the U.S. Patent and Trademark Office requirements on prophetic examples as set forth in MPEP 608.01(p) (II).

The only description on how to obtain collagen II in the WO '723 reference is at page 22, lines 6-29 and in Example 2 on pages 29 and 30 of the reference. The description therein is not described using past tense language, and thus constitutes paper or prophetic examples under MPEP 608.01(p)(II).

Although the prophetic method on obtaining collagen II appears quite detailed at page 22, lines 6-29 and in Example 2 of the reference, there is no hint or even remote suggestion therein of subjecting natural cartilage tissue to defatting as specified in all of the claims presently pending.

Since the WO '723 reference contains no suggestion whatsoever of a defatting step in connection with purifying collagen II, the reference cannot anticipate or render obvious the present claims.

Moreover, Applicants' own experiments, detailed in the Declarations filed in the grandparent application of the present case (U.S. Serial No. 08/894,517, now U.S. Patent No. 6,326,029), confirm that purified collagen II according to the present claims cannot be produced by the method disclosed in WO '723 reference. The previously filed Declarations of record provide uncontroverted evidence that no fibers of native collagen II are produced when carrying out the method disclosed in WO '723 reference.

Since the WO '723 reference fails to teach or suggest production of purified collagen II by subjecting natural cartilage tissue to defatting, and since the prophetic disclosure and paper example of the WO '723 reference fails to teach or suggest how to produce purified fibers of native collagen II, it is respectfully submitted that the present claims are patentable over the WO '723 reference.

Additionally, since the WO '723 reference fails to teach or suggest a matrix consisting essentially of purified collagen II material and consisting essentially of fibers of native collagen II which are physiologically acceptable for implant to a mammalian body, the present claims are patentable over the WO '723 reference.

It is respectfully submitted that claim 9 is additionally patentable for specifying that the claimed collagen II material is derived from hyalin cartilage from pig. Applicants' prior Declarations of record in the previously mentioned parent application

of this case provide uncontroverted evidence that the prophetic method disclosed in the WO '723 reference cannot produce purified fibers of native collagen II from pig cartilage. Accordingly, claim 9 is additionally patentable for further specifying that the purified collagen II is derived from hyalin cartilage from pig.

In view of the above amendments and remarks, withdrawal of rejection based on the WO '723 reference is respectfully requested.

Applicants submit that the present application is now in condition for allowance. Reconsideration and favorable action are earnestly requested.

Respectfully submitted,



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